REMARKS

In response to the Office Action mailed September 9, 2004, the Applicants added new claims 53-57. Claims 1-57 are presented for examination. In view of the following remarks, the applicants respectfully request withdrawal of each of the rejections and allowance of the application.

Independent claim 1

Claim 1 has been rejected under 35 U.S.C. §103(a) as being unpatentable over David (WO9959096) in view of Frost (U.S. 5,041,972) and further in view of Judith. Neither the David nor Frost nor the Judith publication describe or suggest a method including receiving at least conjoint survey data concerning consumer experience with a brand as recited in independent claim 1.

The office action takes the position that David discloses receiving at least conjoint survey data concerning consumer experience with a brand, citing page 3, lines 6-8, page 15, lines 18-20, and page 16, lines 6-8. The applicant disagrees with this position.

David discloses an example of a survey question that asks a customer which foods the customer likes from a list of 50 different foods:

> For example, the survey may ask which foods a customer likes from a list of 50 different foods. A customer can check 0-49 of these selections to create a multi-nominal that is typically stored as a Boolean vector. (David page 15, lines 18-20).

Although such a technique may represent an example of a survey, it is not equivalent to "conjoint survey data." Neither the other cited portions nor anywhere else in David is there a suggestion to receive conjoint survey data concerning a consumer experience with a brand.

The office action goes on to acknowledge that "David and Frost do not explicitly disclose the use of conjoint data." (office action, page 4, lines 1-2). This further supports the applicant's position.

Frost teaches a method of evaluating customer response that includes conducting interviews to obtain product and brand information and processing the product and brand

information. (See column 7, lines 29-54 of Frost). For example, Fig. 1 of Frost shows a system displaying automobiles requiring a user to select and independently evaluate each automobile a scale of 0 to 10. However, Frost's method of evaluation does not relate to using "conjoint survey concerning consumer experience with a brand" data as required by claim 1.

The office action goes on to rely on Judith to provide the idea of receiving conjoint survey data and takes the position that it would have been obvious to modify David and Frost to incorporate the conjoint survey in Judith to yield the invention of claim 1. The office action appears to take the position that the mere idea of using conjoint analysis is all that is missing from David and Frost. The applicant disagrees.

The applicant acknowledges that Judith includes at least some discussion related to conjoint analysis to estimate price sensitivity and value for customer calling features. However, even if Judith were combined with David and Frost it would fail to disclose receiving at least conjoint survey data concerning consumer experience with a brand as recited in independent claim 1. Judith uses rank ordering of pairs of product attributes and yes/no decisions between pairs of fully described products to determine attributes valued by the respondents (page 2, line 50-54). Judith does not suggest using such conjoint analysis to survey consumers about an experience with a brand.

In addition, there is no motivation to combine the three references. For example, Frost provides a system in which users rate an attribute for a product on a scale of 0-10. The relationship between multiple products is then evaluated using a Euclidian distance between the survey responses for the different items (col. 4, lines 57-65). For the sake of argument, even if Judith disclosed the use of conjoint survey data concerning the consumer experience, it would not have been obvious to one of ordinary skill in the art to combine such survey data with the methods disclosed in Frost because the data analysis using Euclidian distances between different survey results would not produce marketing analytics as recited in claim 1.

Claims 2-7, 38-42 and 51-57, which depend from independent claim 1, are patentable for at least the same reasons that independent claim 1 is patentable.

Dependent claim 38

Claim 38 has been rejected under 35 U.S.C. §103(a) as being unpatentable over David in view of Frost, Judith, and Revashetti as applied to claim 1 and further in view of Reason (GIS – Is it a private matter).

In addition to the reasons set forth above for claim 1, claim 38 is allowable for other reasons. The office action acknowledges that David, Frost and Judith fail to teach utility information and relies on Reason to provide what is missing. But Reason provides a discussion of whether electric utility information should be protected or regulated based on privacy concerns. Reason discusses the use of electric utility information about individuals and specific households for marketing purposes. While the words "utility data" are used in Reason, the utility data disclosed in Reason relates to electric utilities and is not a type of conjoint survey data concerning a consumer experience with a brand as recited in the applicant's claim 38 and described for example on page 15 of the applicant's specification. It is not clear how the electric utility data of Reason would be combined with the other references to generate a process that includes "receiving at least conjoint survey data concerning consumer experience with a brand includes utility information." Dependent claim 57 further limits utility information to be based on a value a respondent placed on an attribute of the brand.

Claims 38 also stands rejected under 35 USC §112 par. 2 because the term "utility information" is indefinite. The noun "utility" is used in a manner that is conventional in the area of marketing decision support. (see, e.g., page 15, line 13, to page 16, line 2). Similarly the phrase "utility information" is used to mean information about utility, and is therefore also definite.

Dependent claim 41

Claim 41 has been rejected under 35 U.S.C. §103(a) as being unpatentable over David in view of Frost, and Judith as applied to claims 1, 8, and 15 and further in view of Paul (Individual Hybrid Models for Conjoint Analysis).

In addition to the reasons set forth above for claim 1, claim 38 is allowable for other reasons. The office action acknowledges that David, Frost and Judith fail to teach calculating a total utility analytic and relies on Paul to provide what is missing.

The applicant's total utility analytic is described for example on page 15 as follows:

> The average total utility 622 is determined by first calculating the utility for each product. The utility is based on values the respondents to the conjoint survey placed on each attribute of each product... Second, each utility value produced by each respondent is then divided by the number of respondents. The total utility analytic provides a measurement that allows the user to evaluate at the highest level the brand performance of the user's product compared to the competitor's product.

Paul discloses a method in which a decision maker rates the desirability of a set of attributes (page 951, col. 1, lines 17-19) and rates the importance of each attribute (page 951, col. 1, lines 20-21). The utility measure disclosed in Paul is the sum of the weighted desirabilities with both sets of inputs supplied by the decision maker. Paul's calculation is significantly different from the applicant's total utility analytic.

Claim 41 also stands rejected under 35 USC §112 par. 2 because the term "utility analytic" is indefinite. The word "analytic" is used as a noun in a conventional manner for the area of marketing decision support relating to a mathematical object used for analysis. The phrase utility analytic relates to such a mathematical object associated with utility.

New dependent claims 53-55 further distinguish the applicant's total utility analytic from the calculation disclosed in Paul.

Dependent claim 42

The examiner has stated that the prior art of record does not disclose that the conjoint survey data concerning the consumer experience is performed in real time. However, the examiner states that it would have been obvious to a person of ordinary skill in the art to receive the data in real time. The applicant disagrees and requests that the examiner provide support for this position.

Independent claims 8, 15, 26, 30, and 34

Independent claims 8, 15, 26, 30, and 34 include similar limitations to claim 1 and are patentable for at least the reasons discussed above. Claims 9-14 depend from independent claim 8, claims 16-21 depend from independent claim 15, claims 27-29 depend from independent claim 26, claims 31-33 depend from independent claim 30, and claims 35-37 depend from independent claim 34, and are patentable for at least the same reasons that independent claims 8, 15, 26, 30 and 34 are patentable.

In view of the foregoing amendments and remarks, the entire application is believed to be in condition for allowance, and such action is respectfully requested.

The fact that the applicant has addressed certain comments of the examiner does not mean that the applicant concedes any other positions of the examiner. The fact that the applicant has asserted certain grounds for the patentability of a claim does not mean that there are not other good grounds for patentability of that claim or other claims.

Please apply excess claim fee of $250.00 to our deposit account 06-1050.

Respectfully submitted,

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